

United States District Court, Northern District of Illinois

4 Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 78	DATE	1/16/2002
CASE TITLE	Tony Brown vs. United Parcel Service		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. For the reasons stated here, both the Complaint and this action must be and are dismissed, so that the Application is denied and the motion is denied as moot. (4-1, 5-1)
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	FILED-ED3 FILED-ED3 02 JAN 16 PM 5:19 U.S. DISTRICT COURT U.S. DISTRICT COURT	number of notices	Document Number 6
<input type="checkbox"/>	No notices required.		JAN 17 2002 date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		CM docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		1/16/2002 date mailed notice	
<input checked="" type="checkbox"/>	Docketing to mail notices.		SN	
<input type="checkbox"/>	Mail AO 450 form.		mailing deputy initials	
SN courtroom deputy's initials				

DOCKETED

JAN 17 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TONY C. BROWN,)	
)	
Plaintiff,)	
)	
v.)	No. 02 C 78
)	
UNITED PARCEL SERVICE,)	
)	
Defendant.)	

MEMORANDUM ORDER

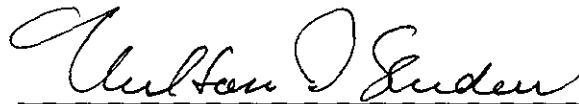
Tony Brown ("Brown") has filed a Complaint of Employment Discrimination (using the form provided by this District Court's Clerk's Office for use by pro se litigants) against his ex-employer United Parcel Service ("UPS"), accompanying his Complaint with an Application To Proceed Without Prepayment of Fees ("Application") and a Motion for Appointment of Counsel ("Motion"), also on forms provided by the Clerk's Office. For the reasons briefly stated here, both the Complaint and this action must be and are dismissed, so that the Application is denied and the Motion is denied as moot.

Based on what is set out in the Application, Brown qualifies for in forma pauperis treatment in financial terms. But his difficulty lies in the fact that he must also overcome the hurdle of non-frivolousness in the legal sense defined by Neitzke v. Williams, 490 U.S. 319, 325 (1989) and refined by Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). And in this instance the Supreme Court's consistent jurisprudence, most recently last

week's unanimous decision in Toyota Motor Mfg., Ky., Inc. v. Williams, No. 00-1089, 2002 WL 15402 (U.S. Jan. 8), bars his claim without any possibility of a cure.

Brown seeks to invoke the Americans with Disabilities Act ("ADA") on the premise that UPS fired him unfairly because of his having failed one of the drug tests that it administered in conjunction with the drug abuse program in which Brown had participated for an entire year. But that scenario simply does not fit within the scope of any ADA-protected situation under the teaching of Toyota and earlier Supreme Court decisions.

Accordingly, as stated at the outset, both Brown's Complaint and this action are dismissed. That in turn calls for denial of the Application, while the Motion is denied as moot, and this Court so orders.

A handwritten signature in cursive script, appearing to read "Milton I. Shadur", is written over a horizontal line.

Milton I. Shadur
Senior United States District Judge

Date: January 15, 2002